

<b>Interview Summary</b>	Application No. 10/613,900	Applicant(s) MCENROE, JOHN D.	
	Examiner Ernesto Garcia	Art Unit 3679	

All participants (applicant, applicant's representative, PTO personnel):

- (1) Ernesto Garcia. (3) \_\_\_\_\_  
 (2) Mr. Robert P. Bell. (4) \_\_\_\_\_

Date of Interview: 09 November 2004.

Type: a) ☐ Telephonic b) ☐ Video Conference  
 c) ☒ Personal [copy given to: 1) ☐ applicant 2) ☒ applicant's representative]

Exhibit shown or demonstration conducted: d) ☒ Yes e) ☐ No.  
 If Yes, brief description: Proposed amendment.

Claim(s) discussed: 1 and 4.

Identification of prior art discussed: Kim, Dyer, and Lemelson.

Agreement with respect to the claims f) ☐ was reached. g) ☒ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Applicant argued that Kim was teaching a rigid plastic. The examiner did not find any reference on the patent as to where it states rigid. The examiner suggested to amend the claims to include a specific thickness that does not fall within Kim's range. We discussed Lemelson and Kim. The examiner explained that the references were used in combination with other teaching to arrive to the claimed invention. Attorney brought in samples of the invention.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

\_\_\_\_\_  
 Examiner's signature, if required

## Summary of Record of Interview Requirements

### Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

#### Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews

##### Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

##### 37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,  
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

#### Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

## Applicant Initiated Interview Request Form

Application No.: 10/613,900 First Named Applicant: John D. McEnroe, JR.  
 Examiner: Ernesto Garcia Art Unit: 3625 Status of Application: Unexamined

## Tentative Participants:

(1) Robert P. Bell (Attorney) (2) Ernesto Garcia (Examiner)  
 (3) \_\_\_\_\_ (4) \_\_\_\_\_

Proposed Date of Interview: November 9, 2004 Proposed Time: 10:00 AM (AM/PM)

## Type of Interview Requested:

(1) ☐ Telephonic (2) ☒ Personal (3) ☐ Video Conference

Exhibit To Be Shown or Demonstrated: ☒ YES ☐ NO

If yes, provide brief description: FENCEBAG™ Products

## Issues To Be Discussed

Issues (Rej., Obj., etc)	Claims/ Fig. #s	Prior Art	Discussed	Agreed	Not Agreed
(1) <u>Rejection</u>	_____	<u>Kim</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(2) <u>Rejection</u>	_____	<u>Dyer</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(3) <u>Rejection</u>	_____	<u>Lemelson</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(4) _____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Continuation Sheet Attached					

## Brief Description of Arguments to be Presented:

Kim and other references do not disclose a bag-like form for casting fence posts and other types of columns. Applicant would like to discuss possible claim language which would overcome these references. (Kim was applied in Parent). See attached Preliminary Amendment. Application would like to discuss Parent Application if possible.

An interview was conducted on the above-identified application on N/A

NOTE: This form should be completed by applicant and submitted to the examiner in advance of the interview (see MPEP § 713.01).

This application will not be delayed from issue because of applicant's failure to submit a written record of this interview. Therefore, applicant is advised to file a statement of the substance of this interview (37 CFR 1.133(b)) as soon as possible.

Robert P. Bell  
Applicant's Representative Signature

Robert P. Bell

Typed/Printed Name of Applicant or Representative

Reg. No. 39,546

Registration Number, if applicable

Ernesto Garcia  
Examiner/SPE Signature

This collection of information is required by 37 CFR 1.133. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 21 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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<p><i>Proposed E.E.</i></p> <p><b>PRELIMINARY AMENDMENT UNDER 37 C.F.R. §1.112</b></p>	Attorney Docket Number	MCEJ101.CIP
	First Named Inventor	John D. McEnroe Jr.
	Application Number	10/613,900
	Filing Date	July 2, 2003
	Group Art Unit	3625
	Examiner Name	Ernesto Garcia
	RPB Reference Number	FENCE-0002
<p>for: CASTING FORM FOR A CAST-IN-PLACE STRUCTURAL ELEMENT AND FENCING SYSTEM INCLUDING CAST-IN-PLACE STRUCTURAL ELEMENTS</p>		

Honorable Commissioner of  
Patents and Trademarks  
Washington, D.C. 20231

Sir:

Prior to Examination on the Merits, please amend the above-captioned application as follows.

**IN THE CLAIMS:**

Please cancel claim 20 without prejudice. Please amend claim(s) 1-19 and 21-25 as follows. Attached hereto is a marked-up version of the changes made to the specification and claims by the present amendment. The attached page(s) are captioned "Version with markings to show changes made".

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What is claimed is:

1. (CURRENTLY AMENDED) A casting form attachable to a form support member erected on a surface contiguous to a substrate upon which a cast-in-place structural element is to be formed, the casting form comprising:

a non-rigid pliable tubular segment which is foldable and rollable upon itself in any axis, including an open first end; and

a form suspension assembly attachable between the pliable tubular segment and the form support member for suspending the pliable tubular segment from the form support member above the substrate.

2. (CURRENTLY AMENDED) The casting form of claim 1, wherein the pliable tubular segment further comprises a polymer material.

3. (CURRENTLY AMENDED) The casting form of claim 2, wherein the polymer material has a thickness less than 0.2 millimeters.

4. (CURRENTLY AMENDED) The casting form of claim 3, wherein the form suspension assembly further comprises a strap made of the polymer material and connected to the pliable tubular segment, the strap attachable to the form support member for suspending the pliable tubular segment above the substrate.

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5. (CURRENTLY AMENDED). The casting form of claim 1, wherein the form suspension assembly further comprises:

- a suspension assembly connector attachable to the form support member; and
- at least one support arm connected to and extending from a suspension assembly connector, the pliable tubular segment attachable to the at least one support arm.

6. (CURRENTLY AMENDED) The casting form of claim 1, wherein the form suspension assembly further comprises:

- a suspension assembly connector attachable to the form support member;
- at least one support arm connected to and extending from a suspension assembly connector; and
- a support ring supported by the at least one support arm, the pliable tubular segment attachable to the support ring.

7. (CURRENTLY AMENDED) The casting form of claim 1, further comprising:

- a connecting member support assembly attached to the non-rigid pliable tubular segment for connecting and supporting a first end of a connecting member to the casting form during the casting of the cast-in-place structural element,

wherein the connecting member support assembly comprises at least one pocket formed in the non-rigid pliable tubular segment, for accepting the first end of the connecting member such that when the casting form is filled with casting material, the casting material surrounds the first end of the connecting member.

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8. (CURRENTLY AMENDED) The casting form of Claim 7, wherein the at least one pocket further includes an aperture, a peripheral edge of the pocket aperture aligned with and connected to a peripheral edge of a side wall aperture, the pocket configured to receive the first end of the connecting member during the casting of the cast-in-place structural element so as to allow casting material to form to a contour of the first end of the connecting member.

9. (CURRENTLY AMENDED) The casting form of claim 1, further comprising:

a form positioning and dampening assembly attachable to the form support member and a surface adjacent to a location upon which the cast-in-place structural element is to be cast for dampening motion in the form support member.

10. (CURRENTLY AMENDED) A casting form erectable on a substrate upon which a cast-in-place structural element is to be formed for casting a cast-in-place structural element, the casting form comprising:

a form support member erectable on a surface contiguous to the substrate upon which the cast-in-place structural element is to be cast;

a form suspension assembly attachable to the form support member; and

a non-rigid pliable tubular segment which is foldable and rollable upon itself in any axis attachable to the form support member for suspending the pliable tubular segment from the form support member above the substrate.

11. (CURRENTLY AMENDED) The casting form of claim 10, wherein the form support

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member is erected on a surface internal to a sidewall of the pliable tubular segment.

12. (CURRENTLY AMENDED) The casting form of claim 10, wherein the form support member is erected on a surface external to a sidewall of the pliable tubular segment.

13. (CURRENTLY AMENDED) The casting form of claim 10, wherein the pliable tubular segment further comprises:

a cylindrical sleeve formed of a sheet polymer material having a wall thickness less than 0.2 millimeters.

14. (CURRENTLY AMENDED) The casting form of claim 13, wherein the form suspension assembly further comprises:

a strap made of the polymer material and connected near a first end of the pliable tubular segment, the strap attachable to the form support member for suspending the pliable tubular segment above the substrate.

15. (CURRENTLY AMENDED) The casting form of claim 10, wherein the form suspension assembly further comprises:

a suspension assembly connector attachable to the form support member; and

at least one support arm connected to and extending from suspension assembly connector, the pliable tubular segment attachable to the at least one support arm.



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16. (CURRENTLY AMENDED) The casting form of claim 10, wherein the form suspension assembly further comprises: a suspension assembly connector attachable to the form support member; a support arm connected to and extending from suspension assembly connector; and a support ring supported by the support arm, the pliable tubular segment attachable to the support ring.

17. (CURRENTLY AMENDED) The casting form of Claim 10, further comprising:  
a connecting member support assembly attached to the non-rigid pliable tubular segment for connecting and supporting a first end of a connecting member during casting of the cast-in-place structural element,

wherein the connecting member support assembly comprises at least one pocket formed in the non-rigid pliable tubular segment, for accepting the first end of the connecting member such that when the casting form is filled with casting material, the casting material surrounds the first end of the connecting member.

18. (CURRENTLY AMENDED) The casting form of Claim 17, wherein the at least one pocket further includes an aperture, a peripheral edge of the pocket aperture aligned with and connected to a peripheral edge of a side wall aperture, the pocket configured to receive the first end of the connecting member during casting of the cast-in-place structural element so as to allow casting material to form to a contour of the first end of the connecting member.

19. (CURRENTLY AMENDED) The casting form of claim 17, wherein the at least one pocket further comprises a hard pocket connected to the pliable tubular segment, the hard pocket defining an

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interior portion including a configuration approximating a configuration of a first end of a connecting member, the hard pocket configured to receive the first end of the connecting member during casting of the cast-in-place structural element.

20. (CANCELLED)

21. (CURRENTLY AMENDED) The casting form of claim 10, further comprising:

a form positioning and dampening assembly attachable to the form support member and a surface adjacent to a location upon which the cast-in-place structural element is to be cast for dampening motion in the form support member.

22. (CURRENTLY AMENDED) A fencing system comprising:

a first form support member erected on a surface contiguous to a substrate upon which the cast-in-place structural element is to be formed;

a second form support member erected on the surface contiguous to a substrate upon which the cast-in-place structural element is to be formed;

a first non-rigid pliable tubular segment which is foldable and rollable upon itself in any axis attached to and suspended from the form support member;

a first connecting member attachment assembly connected to the first pliable tubular segment;

a second non-rigid pliable tubular segment which is foldable and rollable upon itself in any axis attached to suspended from the second form support member;

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a second connecting member attachment assembly connected to the second pliable tubular segment; and

a connecting member including a first end attached to the first connecting member attachment assembly.

23. (CURRENTLY AMENDED) The fencing system of claim 22, wherein the first form support member is erected in a first post hole and the second form support member erected in a second post hole.

24. (CURRENTLY AMENDED) The fencing system of claim 22, further comprising:  
a first form positioning and dampening assembly attachable to the first form support member for stabilizing the first form support member; and

a second form positioning and dampening assembly attachable to the second form support member for stabilizing the second form support member.

25. (CURRENTLY AMENDED) The fencing system of claim 22, further comprising:  
a curable casting mixture cast-in-place within the first pliable tubular segment and the second first pliable tubular segment.

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# **REMARKS**

Claims 1-19 and 21-25 are now pending in the above-captioned application.

The present application has yet to be Examined. However, the present application is a C-I-P of Ser. No. 10/264,094, which was finally rejected. An RCE has been filed in that application to continue Prosecution on the Merits.

The claims of the present invention are related to the claims in the Parent application. Thus, a discussion of the Prior Art references (Kim and Dyer) applied in the Parent Application is in order. The present claims have been amended to distinguish over these references.

Kim has an issue date of October 17, 1995 and thus cannot be sworn behind by applicant.

Applicant has previously presented, in the parent application, extensive arguments with regard to the Kim reference, and these arguments will not be repeated here. But suffice to say that the crux of applicant's argument is that the present invention uses a foldable and/or rollable bag-like material (applicant's company is indeed called "FenceBag.com" for this reason) whereas Kim shows a stiff rigid structure that is designed to form an outer metal shell (see Kim, title).

The Examiner correctly notes that Kim mentions using plastic. (Col. 4, line 16.) The Examiner also correctly notes that that Kim mentions thicknesses as little as 0.2 mm (Col. 4, line 19). The Office Action argues that this teaching of Kim reads on the present invention.

Applicant respectfully disagrees. *Taken in context*, Kim discloses thicknesses of 0.2 mm for METAL only. Note that in Col. 4, line 16, Kim states that his thin shell may be made of "plastic or metal, such as stainless steel, aluminum, copper or their respective alloys". No mention is made of sheet polymer material or any other plastic substance. The focus here is on metal, and plastic is not mentioned further in the specification or claims. Given that Kim discloses a rigid tube for his structure, it is clear he is not referring to 0.2mm in the context of plastic.

The teachings of Kim must be taken as a whole, and individual words cannot be taken out of the specification, out of context, and combined with other words to produce a "teaching".

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If we look at the overall invention of Kim, we see that this outer shell supports the entire assembly as the concrete is poured in there is no supporting rebar in his invention. One of ordinary skill in the art would quickly realize that such a shell would have to be rigid enough to support the load of concrete without losing shape or collapsing during the curing process, hence one of ordinary skill in the art would realize that Kim was referring to metal thicknesses of 0.2 mm. One of ordinary skill in the art would also realize that a thin plastic sheet 0.2 mm thick would collapse under the weight of the concrete, absent some other form of support, as in the present invention.

Thus, if Kim is said to teach any sort of plastic sleeve for use as a mold for pouring concrete, it would have to be a sleeve substantially thicker than 0.2mm to 0.3mm. Kim, of course does not elaborate on this subject, as his invention is directed toward a metal sleeve, and the word "plastic" is mentioned only in passing.

Thus, one cannot take the teachings of Kim as a teaching of using a flexible shell, which may be folded or rolled. As taught in the present specification, paragraph [0020], "The term **"pliable"** as used herein means **foldable and/or rollable** along both the length and the width of the material."

To make this distinction clear, applicant has amended the independent claims of the present application to recite that the sleeve is both rollable and foldable in any axis (i.e., it can be crumpled or wadded up, rolled, folded, etc.).

As discussed above, applicant noted that Kim does not appear to disclose structural member which is embedded in a substrate. In applicant's invention, the rebar acts like a tent pole, embedded in the ground and suspending the form, which hangs down surrounding the rebar.

In the Parent application, the rejection relies upon Kim, element 38 of Figure 11 (See, Col. 5, lines 40-48) to show such a feature. However, Kim does not disclose element 38 of Figure 38 as a structural element, but rather a perforated pipe which may be used to run electrical wires and/or drain excess water from the concrete as it cures. There is no teaching within Kim that this pipe even extends throughout the entire length of the tube or provides any structural support to the tube.

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Again, the teachings of Kim must be taken in their entirety. A Prior Art reference cannot be used cafeteria-style, by selecting those portions advantageous to his argument while ignoring those portions which discredit the argument.

Moreover, there clearly is no teaching in Kim of this electrical conduit pipe being stuck into the ground (substrate) as with the rebar support 15 of the present invention, as is set forth in the claims of the present invention. Thus, it is clear that this "pipe" of Kim cannot support the outer shell during casting as does the tent-pole like rebar in the present invention. Even if one can argue that the pipe could support the outer shell, Kim does not teach this, rather he teaches the shell provides the support and is referred to as the structural member in Col. 7 claim 1, to wit: "1. A structural member adapted to be used in combination with a base...".

With regard to the dependent claims, it is again noted that Kim clearly does not teach any sort of sheet polymer material, but mentions only "plastic". The thicknesses of 0.2mm to 0.3mm of Kim is clearly intended to describe the sheet metal thicknesses, not thicknesses of plastic. Indeed, Kim makes no other mention of how such a plastic embodiment would work.

However, in the interest of advancing prosecution of the application, applicant has amended dependent claims 3 and 13 to recite that the thickness of applicant's fence bag is less than 0.2 millimeters (e.g., 0.15 millimeters or 6 mils). Applicant originally discloses a thickness range of 4 to 40 mils. In the Parent application, applicant's previous Attorney converted this range incorrectly to metric terms of 0.13 to 0.25 millimeters. The actual conversion of 4 to 40 mils to metric is approximately 0.1 to 1.0 millimeters. Applicant has amended claims 3 and 13 to recite that the thickness of the material is less than 0.2 millimeters – a range that is not taught by Kim.

As noted in the Specification, applicant, in the preferred embodiment, uses a plastic less than 0.2 millimeters thick, as such a plastic provides the flexibility and foldability needed to make the product compact and easily shipped. Attached is a printout from applicant's website [www.fencebag.com](http://www.fencebag.com), which the Examiner is encouraged to visit. As shown on that website, the form of the present invention can be folded up and held in the palm of one's hand – a feature not disclosed by any of the Prior Art references.

With regard to claim 4 and 14, a similar claim 12 in the parent application was rejected in view of Kim. It is quite a stretch to say that the end cap of Kim can comprise a "strap". However, to further

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distinguish the present invention from that of Kim, applicant has amended claims 4 and 14 to depend from claims 3 and 13, respectively, and recite that the strap is made of the same pliable polymer sheet as the sleeve. Kim clearly does not teach this limitation.

The other reference applied to the claims in the parent application is the Dyer reference. Dyer is an ancient reference that also cannot be sworn behind.

Dyer, however, discloses a form made of a "rigid sheet material such as cardboard or plastic" (Col. 1, line 59-60). Independent claims 1, 10, and 22, as amended recites a non-rigid, pliable material, which may be rolled and folded on itself in any axis.

If the Office Action in the parent Application can argue that a single recitation of "plastic" in Kim is sufficient to read on applicant's prior claim, then it cannot be argued that the recitation of "rigid" in Dyer does not carry weight.

Also note that Dyer does not disclose applicant's tent-pole like arrangement, where the rebar supports the form during casting. Rather, Dyer does the opposite. His cardboard form rests on the ground, and cardboard tabs are used to support the rebar (to keep it vertically in place during the pour). The Office Action in the parent Application considered tab 15 and hole 16 in Dyer being structurally the same (Office Action of July 6, 2004, page 11) as applicant's strap. However, in Figure 9, the rebar does not pass through the suspension straps.

Also note that Dyer does not disclose applicant's tent-pole like arrangement, where the rebar supports the form during casting. Rather, Dyer does the opposite. His cardboard form rests on the ground, and cardboard tabs are used to support the rebar (to keep it in place during the pour).

In addition, the teaching in Dyer of a "connecting member support assembly" is weak in view of applicant's amended claims. In particular, Dyer discloses little more than a tube 24 which may be inserted in a hole 25 so that wire may be strung through the fence post. Claims 7, 8, 17 and 18, as amended, now recites a pocket formed in the tubular segment - a feature neither taught or suggested by Kim or Dyer. Note that the tube of Dyer, pushed through the sidewall of the casting form is not by any means leak proof as is applicants invention. If this design could be modified to accept a structural

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member such as a fence rail, the leakage would be excessive. Moreover, in it's not clear that the wire of Dyer can be construed as a structural member?

The Lemelson reference was also applied to the claims of the parent Application, in conjunction with Kim in an obviousness-type rejection.

In order to be complete, an obviousness-type rejection must contain two elements:

1. The references, as combined, must show all the features of the claimed invention (all elements rule); and
2. A *proper* motivation to combine the references must be provided.

In this instance, neither element is present.

As noted above, Kim does not teach a pliable plastic tubular element for casting in place. Rather, he discloses a rigid metal shell that is left *in situ* after the concrete is poured and cured. Kim only mentions the word "plastic" in passing and does not teach or suggest how such plastic might be used in a pliable shell.

Lemelson discloses a number of fence post designs, including, in Figure 12, a rigid fence post made of a blow-molded material. Lemelson mentions in passing that his rigid blow-molded fence post can be filled with concrete.

Thus, neither references teaches or suggests how to make a pliable tubular member for use as a casting form, and thus the rejection fails to teach or suggest all of the claimed elements of applicant's invention.

The Office Action in the parent Application states that Lemelson's mention of filling his rigid plastic fence post with concrete is a teaching of applicant's "pocket" of claims 8 and 18. However, as amended, claims 8 and 18 now recites that the pocket allows the casting material to form to the contour of a connecting member end portion. As Lemelson teaches a rigid fence post, his "pocket" cannot form to the contour of a connecting member and thus form a secure connection.



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Lemelson was also applied in combination with Dyer in the parent Application in an obviousness-type rejection.

This rejection has already been addressed above in connection with the §102 rejection in view of Dyer. As noted there, Dyer discloses only a rigid form, where as the present invention is pliable ("fencebag"). Dyer does not disclose a pocket (claims 7 and 17) that forms to the contour of a connecting member end portion (claims 8 and 18).

# **REQUEST FOR EXAMINER INTERVIEW**

Applicant has requested an in-person interview with Examiner Garcia to discuss the present application.

The goal for such an interview would be twofold:

1. To demonstrate applicant's invention using numerous physical embodiments of the invention to highlight the distinction of applicant's "bag" invention over the Prior Art.
2. To discuss what claim language, if any, would be acceptable to the Examiner to distinguish the present invention over the art, namely to recite the flexibility of applicant's bag versus the rigid devices of the Prior Art.

The Examiner is encouraged to call the undersigned at (703) 768-0340 to arrange an interview at a time of his convenience.

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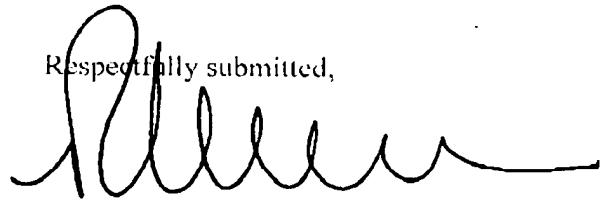
PATENT

**CONCLUSION**

The references applied in the parent do not teach or suggest applicant's FENCEBAG invention. The claims of the present application have been amended to more clearly distinguish the present invention over the Prior Art of record. Thus, the present application is presently in condition for allowance.

An early Notice of Allowance is respectfully requested.

Respectfully submitted,



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What is claimed is:

1. (CURRENTLY AMENDED) A casting form attachable to a form support member erected on a surface contiguous to a substrate upon which a cast-in-place structural element is to be formed, the casting form comprising:

a ~~non-rigid~~ pliable tubular segment which is foldable and rollable upon itself in any axis, including an open first end; and

a form suspension assembly attachable between the pliable tubular segment and the form support member for suspending the pliable tubular segment from the form support member above the substrate.

2. (CURRENTLY AMENDED) The casting form of claim 1, wherein the pliable tubular segment further comprises a polymer material.

3. (CURRENTLY AMENDED) The casting form of claim [1] 2, wherein the [pliable tubular segment further comprises a sidewall including] polymer material has a thickness less than 0.2 millimeters [in the range of 4 mils to 40 mils].

4. (CURRENTLY AMENDED) The casting form of claim [1] 3, wherein the form suspension assembly further comprises a strap made of the polymer material and connected to the pliable tubular segment, the strap attachable to the form support member for suspending the pliable tubular segment

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above the substrate.

5. (CURRENTLY AMENDED). The casting form of claim 1, wherein the form suspension assembly further comprises:

a suspension assembly connector attachable to the form support member; and

[a] at least one support arm connected to and extending from a suspension assembly connector, the pliable tubular segment attachable to the at least one support arm.

6. (CURRENTLY AMENDED) The casting form of claim 1, wherein the form suspension assembly further comprises:

a suspension assembly connector attachable to the form support member;

[a] at least one support arm connected to and extending from a suspension assembly connector;

and

a support ring supported by the at least one support arm, the pliable tubular segment attachable to the support ring.

7. (CURRENTLY AMENDED) The casting form of claim 1, further comprising:

a connecting member support assembly attached to the non-rigid pliable tubular segment for connecting and supporting a first end of a connecting member to the casting form during the casting of the cast-in-place structural element,

wherein the connecting member support assembly comprises at least one pocket formed in the

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non-rigid pliable tubular segment, for accepting the first end of the connecting member such that when the casting form is filled with casting material, the casting material surrounds the first end of the connecting member.

8. (CURRENTLY AMENDED) The casting form of Claim 7, wherein the [connecting member support assembly] at least one pocket further [comprises a pocket including] includes an aperture, a peripheral edge of the pocket aperture aligned with and connected to a peripheral edge of a side wall aperture, the pocket configured to receive [and support] the first end of the connecting member during the casting of the cast-in-place structural element so as to allow casting material to form to a contour of the first end of the connecting member.

9. (CURRENTLY AMENDED) The casting form of claim 1, further comprising:  
a form positioning and dampening assembly attachable to the form support member and a surface adjacent to a location upon which the cast-in-place structural element is to be cast for dampening motion in the form support member.

10. (CURRENTLY AMENDED) A casting form erectable on a substrate upon which a cast-in-place structural element is to be formed for casting a cast-in-place structural element, the casting form comprising:

a form support member erectable on a surface contiguous to the substrate upon which the cast-in-place structural element is to be cast;

a form suspension assembly attachable to the form support member; and

a non-rigid pliable tubular segment which is foldable and rollable upon itself in any axis

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attachable to the form support member for suspending the pliable tubular segment from the form support member above the substrate.

11. (CURRENTLY AMENDED) The casting form of claim 10, wherein the form support member is erected on a surface internal to a sidewall of the pliable tubular segment.

12. (CURRENTLY AMENDED) The casting form of claim 10, wherein the form support member is erected on a surface external to a sidewall of the pliable tubular segment.

13. (CURRENTLY AMENDED) The casting form of claim 10, wherein the pliable tubular segment further comprises:

a cylindrical sleeve formed of a sheet polymer material having a wall thickness less than 0.2 millimeters [in the range of 4 mils to 40 mils].

14. (CURRENTLY AMENDED) The casting form of claim [10] 13, wherein the form suspension assembly further comprises:

a strap made of the polymer material and connected near a first end of the pliable tubular segment, the strap attachable to the form support member for suspending the pliable tubular segment above the substrate.

15. (CURRENTLY AMENDED) The casting form of claim 10, wherein the form suspension

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assembly further comprises:

a suspension assembly connector attachable to the form support member; and

[a] at least one support arm connected to and extending from suspension assembly connector, the pliable tubular segment attachable to the at least one support arm.

16. (CURRENTLY AMENDED) The casting form of claim 10, wherein the form suspension assembly further comprises: a suspension assembly connector attachable to the form support member; a support arm connected to and extending from suspension assembly connector; and a support ring supported by the support arm, the pliable tubular segment attachable to the support ring.

17. (CURRENTLY AMENDED) The casting form of Claim 10, further comprising:

a connecting member support assembly attached to the non-rigid pliable tubular segment for connecting and supporting a first end of a connecting member during casting of the cast-in-place structural element,

wherein the connecting member support assembly comprises at least one pocket formed in the non-rigid pliable tubular segment, for accepting the first end of the connecting member such that when the casting form is filled with casting material, the casting material surrounds the first end of the connecting member.

18. (CURRENTLY AMENDED) The casting form of Claim 17, wherein the [connecting member support assembly] at least one pocket further [comprises a soft pocket] includes an aperture, a peripheral edge of the pocket aperture aligned with and connected to a peripheral edge of a side wall [of

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the pliable tubular segment] aperture, the pocket configured to receive [or support] the first end of the connecting member during casting of the cast-in-place structural element so as to allow casting material to form to a contour of the first end of the connecting member.

19. (CURRENTLY AMENDED) The casting form of claim 17, wherein the [connecting member support assembly] at least one pocket further comprises a hard pocket connected to the pliable tubular segment, the hard pocket defining an interior portion including a configuration approximating a configuration of a first end of a connecting member, the hard pocket configured to receive [or support] the first end of the connecting member during casting of the cast-in-place structural element.

20. (CANCELLED)

21. (CURRENTLY AMENDED) The casting form of claim 10, further comprising:  
a form positioning and dampening assembly attachable to the form support member and a surface adjacent to a location upon which the cast-in-place structural element is to be cast for dampening motion in the form support member.

22. (CURRENTLY AMENDED) A fencing system comprising:  
a first form support member erected on a surface contiguous to a substrate upon which the cast-in-place structural element is to be formed;  
a second form support member erected on the surface contiguous to a substrate upon which the



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cast-in-place structural element is to be formed;

a first ~~non-rigid~~ pliable tubular segment which is foldable and rollable upon itself in any axis  
attached to and suspended from the form support member;

a first connecting member attachment assembly connected to the first pliable tubular segment;

a second ~~non-rigid~~ pliable tubular segment which is foldable and rollable upon itself in any axis  
attached to suspended from the second form support member;

a second connecting member attachment assembly connected to the second pliable tubular  
segment; and

a connecting member including a first end attached to the first connecting member attachment  
assembly.

23. (CURRENTLY AMENDED) The fencing system of claim 22, [further comprising] wherein  
the first form support member ~~is~~ erected in a first post hole and the second form support member erected  
in a second post hole.

24. (CURRENTLY AMENDED) The fencing system of claim 22, further comprising:

a first form positioning and dampening assembly attachable to the first form support member for  
stabilizing the first form support member; and

a second form positioning and dampening assembly attachable to the second form support

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member for stabilizing the second form support member.

25. (CURRENTLY AMENDED) The fencing system of claim 22, further comprising:

a curable casting mixture cast-in-place within the first pliable tubular segment and the second first pliable tubular segment.